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10 Counsel for Plaintiff:
11 Willy Carl Lyons

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 WILLY CARL LYONS,

15 Plaintiff,

16 vs.

17 D. BAUGHMAN, et al.

18 Defendants.
19 _____

NO. CIV S-01-0412 LKK KJM P

**APPOINTED COUNSEL'S SECOND
EX PARTE REQUEST
FOR AUTHORITY TO INCUR COSTS
(trial transcript and expert witness) AND
REQUEST FOR PAYMENT**

20 PART I

21 I, Carter C. White, declare:

22 1. I am an attorney admitted to practice law in the State of California and in the United
23 States District Court for the Eastern District of California. I am the Supervising Attorney of the King
24 Hall Civil Rights Clinic ("Clinic"), appointed attorney of record for plaintiff in this action.

25 2. In this case the plaintiff, Mr. Lyons, a California state prisoner, alleges that the
26 Defendants, Baughman and Walker, are liable for damages for violating plaintiff's right to be free
27 from deliberate indifference to his health and safety under the Eighth Amendment. The Court
28 appointed the Clinic to represent plaintiff in July 2006 (see Doc. 124). The case was tried to a jury
in January 2008. On January 18, 2008, after the jury was unable to reach a unanimous verdict, the
Court declared a mistrial (see Doc. 204). At a subsequent status conference, the Court set the case
for a second jury trial (see Doc. 207).

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1 3. The second trial is set to begin on February 18, 2009. In order for the Clinic to
2 adequately and effectively represent Mr. Lyons in this second trial, I believe it is reasonably
3 necessary for two substantial expenditures of funds to be made.

4 4. First, I believe it is necessary for counsel for plaintiff to acquire a transcript of the
5 testimony of all witnesses from the first trial. It is anticipated that most or all of the witnesses from
6 the first trial will testify at the second trial, and a complete transcript of the testimony from the first
7 trial is essential to properly prepare the plaintiff and his witness, as well to effectively cross-examine
8 the defense witnesses. A certified law student working under my supervision has contacted the
9 court reporter, whose estimate for a transcript of the trial testimony (without jury selection or
10 opening or closing statements) is \$1,387.

11 5. Second, I believe that it is necessary for the Clinic to again utilize the services of the
12 plaintiff's expert witness in this case, correctional expert Mr. James Esten. Mr. Esten was Mr.
13 Lyons' principal witness in the first trial and will need to be compensated to prepare for and testify
14 at the second trial. The cost of retaining this expert for the second trial is not expected to exceed
15 \$ 4,000. I will do all that I can to keep the expert costs minimal and reasonable, and have asked for
16 here an amount that is hoped to be the maximum needed.

17 6. To date no other cost payments have been approved by the Court in this case. The
18 Clinic filed a Request for Authority to Incur Costs in October 2007 (Doc. 173) requesting an advance
19 to cover expert witness expenses in connection with the first trial, but the Court did not rule on that
20 request. To date the Clinic has incurred just under \$7,000 in expenses for this expert (\$6953.64),
21 and it is doubtful that we can continue representing Mr. Lyons in the second trial without Court
22 approval of this request.

23 7. I understand and agree that all of the costs requested of, and paid by the Court in this
24 case will be reimbursed out of any recovery or settlement received for the plaintiff.

25 8. Based upon the foregoing, I request that this Court authorize the expenditure of
26 \$5,400 for a transcript of the first trial and the retention of an expert witness on the issue of
27 plaintiff's failure to protect claims as described herein.

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1 I declare under penalty of perjury that the foregoing is true and correct and that this is
2 executed this 2nd day of October 2008, in Yolo County, California.

3 /S/ *Carter C. White*

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5 Carter C. White
6 Attorney for Plaintiff
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17 The above expenditure is

18 X Approved.

19 _____ Disapproved.
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21 Dated: October 9, 2008.
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24 LAWRENCE K. KARLTON
25 SENIOR JUDGE
26 UNITED STATES DISTRICT COURT
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